IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO. 355 OF 2007

SHRI. DEELIP RAGHAVENDRA SHETYE ... Petitioner
Versus
SHRI. KASHINATH JAIRAM SHETYE AND 3 ORS., ... Respondents

Mr. Sudin M. S. Usgaonkar,Advocate for the petitioner.
Respondent No. 1 in Person.

Coram:- R. S. MOHITE, J.

Date:- 3rd August, 2007

P.C.

This writ petition impugns an order dated 9.5.2007 passed by the Civil Judge, J.D. 'C; Court, Panji rejecting the application for amendment of the plaint under O.6, R.17 of the Civil Procedure Code. The present petitioner who is plaintiff in the suit had filed the Special Civil Suit No.152/99/C for declaration that an agreement dated 12.5.98 was null and void. The suit further sought a permanent injunction restraining defendant Nos. 1 & 2, their agents and servants from interfering in any manner in the suit premises. The suit premises were described as a shop No.21. According to the plaintiff, the suit premises were allotted to him by the builder who is now impleaded as defendant No.4 in the suit, under an agreement dated 13.4.97. The said agreement indicates that the shop to be allotted after reconstruction to the present petitioner was shop No.21. This shop No.21 was in fact specifically marked on the sanctioned construction plan of the ground floor annexed to this agreement. If the agreement for allotment is taken in to account and the map annexed thereto if perused there can be no doubt about the identification of the suit shop. However, in the agreement dated 12.5.98 which has been executed by the builder in favour of respondent No.2, there is no shop

number mentioned. The plaintiff filed an application for amendment in which he has contended that the owner had subsequently changed or altered the original plan of the 'Magnum Center.' Suit premises which were shown as shop No.21, were given shop No.20 in the new plan. He therefore, sought another amendment asking that shop No.20 should be referred to as suit premises. This has been rejected by the trial court on the ground that it would change the nature of the suit. In my view, the rights of the petitioner/ original plaintiff are governed by his own agreement and there is no doubt in respect of identification of the shop which was allotted to the present petitioner/original plaintiff. The description in the agreement in his favour in the plan annexed to the agreement, fully identifies the property in respect of which the plaintiff has right. Any subsequent action on the part of builder, of changing the number of shop, does not in any way affect the right of the plaintiff on the shop allotted to him under agreement dated 13.4.97. In fact plan which is annexed to the agreement is the sanctioned plan duly sanctioned by the competent authority and this cannot be altered by the builder. Even if he changes some numbers, that will nowhere affect the plaintiff's right in the suit. Affidavit and reply of respondent No. 1 & 2 are taken on record.It is always open to the plaintiff to explain development in his evidence. I don't feel there exists any need to entertain the petition and same stands dismissed.

R. S. MOHITE, J.

SMA